99TH CONGRESS
1st Session

SENATE

REPORT
99-69

PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985

MAY 21 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 259]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 259) to protect the public interest in stable relationships among communities, professional sports teams and leagues and in the successful operation of such teams in communities throughout the Nation, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

The Professional Sports Community Protection Act of 1985, S. 259, is intended to stabilize community, team, and league relationships by ensuring equitable consideration of community interests while preserving league self-regulation. The bill provides that professional sports leagues may enforce intraleague rules concerning team relocation, division of revenues, and selection and removal of team owners, provided certain procedural and substantive requirements are satisfied. The Committee views S. 259 as a necessary clarification of the law because it does not believe the types of intraleague agreements covered by the bill were intended to be illegal.

51-010 O

S263-16

Background and Needs

Along with civic pride, professional sports teams generate revenues, jobs, and other local economic development. Recognizing this, communities have long been willing to make a considerable investment of tax dollars to construct and maintain playing facilities. Many cities also offer lucrative tax breaks to professional sports teams in order to attract and keep them in the community.

Recent legal developments and the actions of individual team owners have made public investments supporting sports teams riskier than ever. Both those cities that have teams and those that do not are faced with uncertainty regarding any financial investment in a major league team, because the stability of many professional sports leagues and the climate for orderly expansion have been adversely affected by court decisions bringing into question the lawful authority of the leagues to enforce franchise location rules.

Congress has previously recognized the importance of team stability and the role of the league in assuring such stability. For example, in 1964, the Senate Judiciary Committee favorably reported a professional sports bill, noting in the accompanying report:

> "The uniqueness of the business of competitive team sports grows out of public interest in teams which are as competitively equal as possible, and the responsibility of the 'league' of teams in maintaining both competitive balance and geographic balance. Without competitive and geographic balance, the leagues and their weak teams are unable to attract and hold the public interest which is necessary for their survival. It is also necessary that the league practice sufficient self-policing so that the public can be assured of the integrity of sports contests." [1]

TEAM RELOCATION

The outcome of the litigation regarding the Oakland Raiders' relocation precipitated the current instability and uncertainty in the relationship between municipalities, professional sports teams, and leagues. In 1980, the owner of the Oakland Raiders professional football team announced plans to move the team to Los Angeles. At the time of the announcement, National Football League (NFL) rules required approval by three-quarters of the league's members for any relocation, and the request to move from Oakland to Los Angeles was denied by a vote of 22 to 0.

Following announcement of the Raiders' intent to relocate, the Los Angeles Coliseum Commission (owner of the Raiders' new home stadium) and the Raiders filed suit against the NFL and each member club alleging that the league rule concerning relocation violated section 1 of the Sherman Act (15 USC 1). In 1982, a jury returned a verdict in favor of the Los Angeles Coliseum Commission and the Raiders, and awarded them approximately $49 million in treble damages. On appeal, the verdict was upheld. The NFL was found not to be a single legal entity for purposes of the Sherman Act and, thus, could be held liable for conspiring to unreason-

[1] S. Rep. No. 1303, 88th Cong., 2d Sess. 6 (1964).

ably restrain trade by blocking the Raiders' move into another team's territory.[2]

When the Raiders moved, Oakland was left with a publicly-financed stadium built especially for the team, with an annual debt service on that facility of $1,500,000 through the year 2006. The Raiders' move also had an impact on the local economy; during Committee hearings, Mr. George Vukasin, President of the Oakland Alameda Coliseum, estimated that the Raiders' presence in the community had generated over $75 million annually for the Oakland area's economy.[3]

Even with strong fan support, Oakland and other current and future major league cities cannot be certain that their teams will not abandon them. In a statement presented during the Committee's hearings, NFL Commissioner Pete Rozelle stated: "When the Raiders decided to move to Los Angeles, they had profits in the two preceding seasons averaging almost $2 million, and they had the third highest ticket revenues in the entire league.[4]

The Raiders' relocation is but one example of the increasingly unstable relationship between cities, professional sport teams, and professional sports leagues. In 1984, the Baltimore Colts football team moved to Indianapolis without prompting a league vote and the Philadelphia football team talked of relocating in Phoenix. In addition, the St. Louis Cardinals and the New Orleans Saints football teams formally notified the NFL in January 1985 that they do not consider themselves bound by the NFL's relocation rules.

In the National Basketball Association (NBA), the San Diego Clippers basketball team moved to Los Angeles in April 1984 without notifying the League and the NBA is now involved in litigation concerning the move.[5] Recently, the Kansas City Kings basketball team requested and received NBA permission to move to Sacramento, CA. Testifying before the Committee, NBA Commissioner David Stern described the current legal situation as a "straitjacket" on the NBA's consideration of the request, because review of the relocation's impact on Kansas City might constitute an antitrust violation.[6]

The National Hockey League (NHL) also has recently experienced controversy over team relocation.[7]

---

[2] *Los Angeles Memorial Coliseum Comm'n.* v. *National Football League,* 726 F.2d 1381, 1390 (9th Cir. 1984), *cert. denied,* 53 U.S.L.W. 3335 (Nov. 5, 1984).

[3] Statement of George Vukasin before the Senate Committee on Commerce, Science, and Transportation (Feb. 20, 1985), reprinted in, Hearings on S. 259 and S. 287; Professional Sports Community Protection Act of 1985, 99th Cong., 1st Sess. (1985) [hereinafter cited as Hearings]. It has been estimated that the Kansas City Kings basketball team, which will move to Sacramento next fall, directly contributed $6 million to the Kansas City economy. N.Y. Times, April 14, 1985, at S9, col. 1.

[4] Statement of Pete Rozelle before the Senate Committee on Commerce, Science, and Transportation 7 (Feb. 4, 1985), reprinted in, Hearings.

[5] *National Basketball League* v. *San Diego Clippers Basketball Club,* No. 84-1430-N(CN) (S.D. Cal. filed June 15, 1984).

[6] Statement of David J. Stern before the Senate Committee on Commerce, Science, and Transportation 2 (Feb. 4, 1985), reprinted in, Hearings.

[7] *See Ralston Purina Co.* v. *National Hockey League,* No. 83-1264-c(3) E.D. Mo. filed May 24, 1983.

LEAGUE REVENUE SHARING

Instability between teams, leagues, and cities may be reduced through league revenue sharing. In the NFL, for instance, nearly 95 percent of its revenues are subject to some degree of sharing among the member clubs. In the NFL's view, this degree of revenue sharing, particularly with respect to television revenues, helps equalize competition and enables teams from smaller cities such as Green Bay, Seattle and Kansas City to compete against teams from large metropolitan areas such as New York.[8] Other professional sports leagues also share revenues, although usually to a lesser extent than the NFL.[9] With leagues operating nationally in communities and markets of broadly differing economic sizes, revenue sharing serves to assure the financial viability of teams despite these differences. It also helps to assure competitive balance on the playing field, thereby improving the quality of sports entertainment.

LEAGUE EXPANSION

The Committee rejected legislative language mandating expansion of the NFL. Nevertheless, the Committee has reason to believe that passage of S. 259 will encourage league expansion. In a March 25, 1985 letter to Chairman Danforth, NFL Commissioner Rozelle stated: "Should legislation be enacted in a form that contains the essential features of S. 259 in the key areas of team location, revenue sharing, and ownership, I will recommend to the NFL clubs that they favorably consider expanding at an early date." (The entire letter is reprinted in the Appendix of this report.)

Although Major League Baseball is not covered by S. 259, Baseball Commissioner Peter V. Ueberroth indicated in an April 1, 1985 letter to Chairman Danforth that Major League Baseball also has expansion plans. (The entire letter is reprinted in the Appendix of this report.)

LEGISLATIVE HISTORY

Senator Eagleton, joined by Senators Danforth, Dixon, and Simon as original cosponsors, introduced S. 259 on January 22, 1985.

Hearings on sports relocation legislation were conducted by the full Committee on February 4 and 20, 1985. The Committee also conducted 2 days of hearings on sports relocation legislation during the 98th Congress (Serial No. 98–87).

Three other bills relating to professional sports team relocation have been introduced in the 99th Congress. S. 287, introduced by Senator Gorton and cosponsored by Senators Mathias, Sarbanes, Long, and Johnston, was referred to the Commerce Committee. S. 172, introduced by Senator Specter and S. 298, introduced by Senator DeConcini, were referred to the Committee on the Judiciary.

---

[8] See National Football League, A Summary of National Football League Economics, 1970–1980 8–12 (February 1982).

[9] See, Weistart, League Control of Market Opportunities, A Perspective on Competition and Cooperation in the Sports Industry, 1984 Duke L.J. 1013, 1025 n. 39.

Related legislation referred to the Committee during the 98th Congress included S. 2050, introduced by Senator Boschwitz and S. 2505, introduced by Senator Gorton. S. 2505 was reported by the Committee on August 9, 1984 (S. Rept. No. 98-592). The 98th Congress adjourned, however, without Senate action on S. 2505.

Summary of Major Provisions

S. 259, as reported, authorizes professional sports leagues exhibiting football, basketball, hockey, or soccer to do the following:

1. enforce league rules that allow league members to decide whether a member club may change its home territory;
2. enforce league rules concerning the sharing of revenues among team owners;
3. enforce league rules that pertain to the selection of team owners; and
4. enforce league rules that pertain to termination of team ownership.

Teams are required by S. 259 to provide notice when they intend to relocate. Following a league-conducted hearing at which interested parties may testify, the league makes its relocation determination based on criteria set out in the bill. Limited judicial review of league determinations concerning team relocation and ownership termination is also provided for by S. 259.

S. 259 expressly does not affect: (1) collective bargaining agreements between players and the league; (2) existing stadium contracts, except those involving relocation of a team; (3) the ability of professional sports leagues to pool the broadcasting rights of member clubs in order to enter into joint agreements concerning sponsored telecasting; and (4) the antitrust laws, except as provided for in the bill.

The bill applies to any team relocation after January 23, 1985.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 16, 1985.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 259, the Professional Sports Team Community Protection Act of 1985, as ordered reported by the Senate Committee on Commerce, Science and Transportation, April 2, 1985.

S. 259 authorizes professional sports leagues to enforce rules regarding team relocation, revenue division and ownership selection and termination of member clubs, and requires leagues to file such rules or agreements with the Secretary of Commerce. The bill also

provides for judicial review of league determinations concerning team relocations and ownership terminations.

We expect that this bill will result in no significant cost to the Federal Government or to State and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

NUMBER OF PERSONS COVERED

S. 259 provides that, notwithstanding any other provision of law, it shall be lawful for professional sports leagues to enforce certain rules or agreements.

As the legislation is simply clarifying or authorizing certain actions by professional sports leagues, it does not subject any persons to additional Federal regulation.

ECONOMIC IMPACT

S. 259 imposes no fees on any professional sports league or member club and it authorizes no appropriations. S. 259 does provide that professional sports teams seeking to enforce lawful agreements pursuant to section 4 must comply with specified substantive and procedural requirements. While these requirements may have some economic impact on professional sports leagues, the Committee believes the impact will be outweighed by the economic benefits associated with greater team stability.

The purpose of S. 259 is to increase stability within professional sports leagues and between professional sports leagues and municipalities. As a result, the indirect economic impact of this legislation should be substantial savings to municipalities, taxpayers, and professional sports leagues. The Committee expects that this legislation will reduce the costly bidding wars between municipalities seeking to attract or keep professional sports teams. S. 259 also should ensure that publicly-financed playing facilities will have stable, long-term tenants. Finally, it is hoped that S. 259 will reduce costly litigation.

Section 9 of the legislation requires each professional sports league to adopt a policy setting forth the criteria it will employ in determining whether and when future expansion of the league will occur and the number of teams which may be added. The Committee believes any economic impact this requirement may have on professional sports leagues will be minor.

PRIVACY

This legislation will not have any adverse impact on the person privacy of any individuals affected.

PAPERWORK

No additional paperwork should result from this legislation because it does not require the promulgation of any new regulations.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section contains the short title of the legislation, the "Professional Sports Community Protection Act of 1985".

SECTION 2.—FINDINGS

Section 2 sets forth congressional findings regarding the public interest in: (1) a stable relationship between professional sports teams and communities; (2) professional sports league policies that permit successful team operation; (3) prompt, equitable resolution of disputes arising from league operations affecting team location; and (4) expansion of professional sports league by promoting team stability.

These findings reflect the Committee's view that the financial and geographic stability of professional sports teams is in the best interest of communities that currently field such teams and communities that will field teams in the future. The Committee fully expects that such stability will create a climate conducive to professional sports league expansion to communities that are not currently the home of a professional sports team.

SECTION 3.—DEFINITIONS

The terms defined in section 3 are "home territory," "local government," "interested parties," "person," "professional sports league," "professional sports teams," "stadium," and "arena".

"Professional sports team" means a group of professional athletes organized to play major league football, basketball, hockey, or soccer. An association composed of two or more "professional sports teams" is a "professional sports league" or "league" if it has adopted, accepted, or put into effect rules for the conduct of the teams and the regulation of contests between the teams, and has carried on sports competition for more than 7 years.

SECTION 4—LAWFUL AGREEMENTS

Subsection (a) provides that, notwithstanding any other provision of law, it shall be lawful for a professional sports league or its member clubs, in accordance with the provisions of this act, to enforce certain, specifically enumerated types of rules or agreements.

The Committee intends that this exemption clarifying a leagues authority to enforce certain rules or agreements be narrowly construed by the courts. Accordingly, section 10 of this act strictly limits the breadth of the exemption provided in subsection (a).

Subsection (a)(1) concerns the enforcement of rules or agreements authorizing a member club to change its home territory. The scope of the exemption provided by this subsection shall be the same when the membership of the league approves or disapproves a member club's proposals to change its home territory.

Subsection (a)(2) concerns the enforcement of rules or agreements for the division of revenues of a professional sports league or its member clubs that tend to promote comparable economic opportunities for member clubs.

The shared revenues may be from any lawful source. The Committee does not intend that this subsection shall expand, restrict, or otherwise alter such sources of revenue or the methods by which they are acquired.

The Committee does not intend that subsection (a)(2) restrict revenue sharing only to those situations in which it can be shown that comparable economic opportunities for all member clubs will be achieved. It is enough that the revenue sharing somehow promotes or contributes to such comparable economic opportunities.

The exemption provided in subsection (a)(2) does not apply to the sharing of expenses or costs among teams. Thus, this act does not affect, for instance, the legality or illegality of sharing the cost of an individual player's salary among the league's member clubs. Nor does this act affect the legality or illegality of a league-wide cap on member-club expenses.

Subsection (a)(3) permits league enforcement of rules or agreements establishing procedures and standards for selection of the owners of member clubs if such procedures and standards provide that the selection shall: (1) require approval by three-fourths of such member clubs; and (2) not be exercised in a discriminatory manner. In using the term "discriminatory manner," the Committee is referring to any and all Federal civil rights statutes presently in effect or enacted subsequent to S. 259.

Subsection (a)(4) permits league enforcement of rules or agreements establishing procedures and standards for the termination of the ownership of member clubs if such procedures and standards provide that the termination shall: (1) require approval by not less than three-fourths of such member clubs; (2) not be exercised in an arbitrary, capricious or discriminatory manner; and (3) only be exercised in circumstances that clearly evidence a threat to the image or integrity of the relevant sport or the professional sports league.

As with owner selection in subsection (a)(3), the Committee intends the term "discriminatory manner" used in subsection (a)(4) to refer to any Federal civil rights statutes presently in effect or enacted subsequent to S. 259. Subsection (a)(4) also specifies that the procedures and standards must provide that the termination shall not be exercised in an arbitrary or capricious manner. By making subsection (a)(4) inapplicable to a termination exercised in an arbitrary and capricious manner, the Committee expects any termination decision pursuant to that subsection to be reasonable in both appearance and reality. In light of the requirements of subsection (a)(4), the relevant league may find it is necessary to make and publish certain findings of fact in order to support its decision.

Subsection (b) provides that if an owner of a professional sports team violates a rule or agreement adopted pursuant to section 4, professional sports league may bring a civil action to enjoin the owner from such violation. The civil action may be brought in U.S district court which has jurisdiction over such action pursuant to 28 U.S.C. 1331.

SECTION 5—NOTICE OF PROPOSED CHANGE IN HOME TERRITORY

Section 5 contains the procedures to be followed by a member club seeking to change its home territory. Section 5 also explains league procedure and criteria for reviewing proposed relocations.

Subsection (a) provides that any persons seeking to change the home territory of a member club to a location other than the location of such member club's home territory must furnish notice at least 6 months before the beginning of the season in which the member club proposes to play in its new home territory.

Subsection (b) specifies the form, content and recipients of the notice referred to in subsection (a).

Subsection (c) requires the professional sports league to make a determination regarding the location of a member club's home territory within 2 months after receiving the notice required in subsection (a). When making a determination regarding a relocation, subsection (c) also requires the professional sports league to conduct proceedings at which interested parties are afforded an opportunity to present oral or written testimony regarding the proposed change in the location of the member club's home territory.

SECTION 6.—DECISIONS ON TEAM LOCATION

Subsection (a) provides that no person may change the location of the home territory of a member club unless such person complies with the notice requirements in section 5 and the professional sports league determines, pursuant to subsection (b), that a change in the home territory of the member club is reasonable and appropriate.

Subsection (b) requires that when considering whether a change in the location of the home territory of a member club is reasonable and appropriate, the league shall consider and make specific findings regarding 12 identified factors and such other factors as the league determines may be appropriate. No single enumerated factor is controlling. Instead, all the factors should be considered and each accorded such weight as the league deems appropriate under the circumstances.

SECTION 7.—JUDICIAL REVIEW

When a league makes a determination regarding the location of a member club's home territory pursuant to section 5(c), that determination may be reviewed in a civil action under section 7(a). Such action may be initiated by: (1) a member club which has furnished notice under section 5 of this act; (2) the owner or operator of such member club's stadium or arena or any stadium or arena in which such member club seeks to play the majority of its home games; or (3) the local government for the locality in which the stadium or arena of such member club is located.

Subsection (b) requires and civil action brought under this section to be commenced within 30 days after the league's determination concerning a change in a member club's home territory. Subsection (b) also provides that a civil action brought under this section must be brought in a U.S. district court which has jurisdiction over such action under 28 U.S.C. 1331.

No such action may be brought, however, in any U.S. district court located in a State which contains the home territory of the member club proposing to change its home territory or in any U.S. district court located in a State which contains the proposed home territory of such member club. On the motion of any party, the district court in which the action was filed may, for the convenience of the parties or in the interests of justice, transfer the suit to another district court which meets the requirements of this subsection.

Subsection (c) contains the district court's standard of review of a league's determination concerning a proposed home territory change. If the court finds that the determination was not supported by substantial evidence on the record, taken as a whole, the league's determination may be set aside. The league's determination may also be set aside if the court finds it was obtained by corruption, fraud, or undue means.

In requiring that the league's determination concerning a change in the home territory of a member club be supported by substantial evidence on the record, taken as a whole, the Committee intends to conform the scope of judicial review provided for in this Act to the scope of judicial review required by 5 U.S.C. 706(2)(E), frequently called the substantial-evidence standard.

If the league's relocation determination is set aside under subsection (c), the district court may grant appropriate declaratory and equitable relief, including injunctive relief and specific performance.

Subsection (d) gives the district court authority, as part of its review, to determine whether interested parties (defined in section 3(1)) were given an opportunity to present testimony at the league's relocation proceeding. If the opportunity was not provided, the court may, by order, require the league to conduct additional proceedings at which such testimony may be presented. The league would then be required to reconsider its determination based on the new testimony. Where the district court requires the league to conduct additional proceedings, the league must reconsider and resubmit its determination within 30 days. Any league reconsideration is subject to court review pursuant to this section.

Subsection (e) provides for court review of a league's decision to terminate the ownership of a member club pursuant to section 4(a)(4). If a league terminates the ownership of a member club, any owner of the member club may obtain judicial review to determine whether the compensation offered for such owner's interest reflects the fair market value of the terminated interest or whether the termination was made in an arbitrary, capricious or discriminatory manner. The provisions contained in subsection (b), including those concerning venue and the time within which a civil action must be filed, are applicable to any judicial review proceeding under subsection (e).

SECTION 8.—RULES AND AGREEMENTS OF PROFESSIONAL SPORTS LEAGUES

Subsection (a) bars a professional sports league from enforcing a rule or agreement adopted pursuant to section 4, unless the rule or

agreement has been filed by the league with the Secretary of Commerce. The rule or agreement must identify the league's member clubs and the manner in which the rule or agreement was adopted by the member clubs. Not later than 30 days after the rule or agreement is filed, the Secretary of Commerce must publish notice of the rule or agreement in the Federal Register. The notice shall identify the league's member clubs and generally describe the rule or agreement.

Subsection (b) provides that a professional sports league must include in its rules or agreements a requirement that the league will consider and make specific findings regarding the factors in section 6(b) when making a determination concerning whether a change in the home territory of a member club is reasonable and appropriate.

SECTION 9.—FORMULATION OF POLICIES CONCERNING EXPANSION

Section 9 requires each professional sports league to formulate and adopt a suitable policy setting forth the criteria it will employ in determining whether and when future expansion of the league will occur, and the number of member clubs which may be added in any such expansion. The policy is to be formulated and adopted within 1 year after enactment of S. 259 or 1 year after the bill becomes applicable to a professional sports league, whichever is later.

A copy of the expansion policy statement must be transmitted to the Secretary of Commerce within 5 days after adoption. The Secretary of Commerce is to publish the policy statement in the Federal Register.

SECTION 10.—INAPPLICABILITY TO CERTAIN MATTERS

Subsection (a)(1) states that nothing in this act shall alter, determine, or otherwise affect the applicability or inapplicability of any law, including the antitrust laws (as defined in subsection (b)) or the labor laws, to: (1) the wages, hours, or conditions of employment of players in any professional sports league; (2) any employment regarding players in any such league; or (3) any collective bargaining rights and privileges of any player union in each league.

S. 259 does not, for instance, give any professional sports league the authority to impose a player salary cap on member clubs. Nor does the Committee intend that the legislation will overturn any judicial ruling concerning the impermissibility or permissibility of any player selection or movement limitations including reserve or option clauses, player draft systems or rules which prohibit member clubs from tampering with the players of another member club.

Subsection (a)(2) specifies that nothing in this act shall alter or affect the applicability or inapplicability of any antitrust law or any law regarding broadcasting or telecasting to any agreement between any league or its member clubs and any person not affiliated with the league, for the broadcasting or telecasting of the games of the league or its member clubs on any form of television.

In specifying that this act shall not affect any law regarding broadcasting or telecasting, subsection (a)(2) expressly refers to the act of September 30, 1961 (15 U.S.C. 1291–95), which grants profes-

sional sports teams, in specified sports, an exemption from the antitrust laws. This antitrust exemption permits these teams to pool their separate rights in the sponsored telecasting of league games. It is the Committee's intent that this act shall not alter or affect the applicability or inapplicability of any antitrust exemption provided by the 1961 act. Nor does this act change the definition of telecasting as used in the 1961 act.

Subsection (a)(3) provides that nothing in this act shall affect any contract or provision of a contract for the use of a stadium or arena between the facility's owner or operator and a member club.

subsection (a)(4) states that, except as provided in this act, the applicability or inapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in major league professional football, basketball, hockey, or soccer, are not altered, determined, or otherwise affected.

As reflected in subsection (a)(4) and elsewhere in the bill, it is the intent of the Committee that S. 259 not in any way change the applicability or inapplicability of the antritrust laws to any interleague act, contract, agreement, rule, course of conduct, or other activity. For instance, S. 259 would create no antitrust immunity for a professional sports league where it is sued by another professional sports league alleging monopolization in violation of section 2 of the Sherman Act (15 U.S.C. 2).

Subsection (b) defines the term "antitrust laws" by reference to definitions of the term in the Clayton Act (15 U.S.C. 12) and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

SECTION 11.—EFFECT ON STATE LAW

Section 11 provides that no State or local government may maintain or enforce any law or regulation which would place limits inconsistent with this act on the rules or agreements of any professional sports league.

SECTION 12.—EFFECTIVE DATE

This act shall apply to any change or proposed change in the home territory of a member club which occurs on or after January 23, 1985. The act would have no effect on any change in a member club's home territory or litigation arising out of such change, if the change occurred prior to January 23, 1985.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of S. 259:

On amendment offered by Senator Gore to require that no professional football league or any of its member clubs may enter an agreement for television broadcast of games with more than two networks unless each competing professional football league has an agreement with at least one other network for television broadcast of that league's games:

YEAS (4)	NAYS (13)
Mr. Packwood [1]	Mr. Danforth
Mr. Gorton	Mr. Goldwater [1]
Mr. Exon	Mr. Pressler
Mr. Gore	Mr. Stevens
	Mr. Kasten
	Mr. Trible
	Mr. Hollings
	Mr. Long
	Mr. Inouye [1]
	Mr. Ford
	Mr. Riegle [1]
	Mr. Rockefeller

[1] By proxy.

On amendment offered by Senator Gore to require the National Football League to increase its membership by at least six teams by the 1990 season:

YEAS (2)	NAYS (14)
Mr. Gorton	Mr. Danforth
Mr. Gore	Mr. Goldwater [1]
	Mrs. Kassebaum
	Mr. Pressler
	Mr. Stevens [1]
	Mr. Kasten
	Mr. Trible
	Mr. Hollings
	Mr. Long
	Mr. Inouye [1]
	Mr. Ford
	Mr. Riegle [1]
	Mr. Exon
	Mr. Rockefeller

On amendment offered by Senator Gorton to prohibit any professional football league from selling or otherwise transferring any rights to televise football games in a member club's home territory unless those games are also available on sponsored television:

YEAS (5)	NAYS (10)
Mr. Pressler	Mr. Danforth
Mr. Gorton	Mrs. Kassebaum
Mr. Trible	Mr. Stevens [1]
Mr. Gore	Mr. Kasten [1]
Mr. Rockefeller	Mr. Hollings
	Mr. Long
	Mr. Inouye [1]
	Mr. Ford
	Mr. Riegle [1]
	Mr. Exon[1]

[1] By proxy.

On motion to report the bill with an amendment in the nature of a substitute:

YEAS (10)	NAYS (6)
Mr. Danforth	Mr. Goldwater [1]
Mrs. Kassebaum	Mr. Pressler
Mr. Stevens [1]	Mr. Gorton
Mr. Kasten [1]	Mr. Hollings
Mr. Trible	Mr. Exon
Mr. Long	Mr. Gore
Mr. Inouye [1]	
Mr. Ford	
Mr. Riegle [1]	
Mr. Rockefeller	

[1] By proxy.

Without objection, the Committee authorized the staff to make any necessary technical or conforming amendments to the bill.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee states that the bill as reported would make no change to existing law.

MINORITY VIEWS OF MR. GORTON

My considerable interest in legislation regarding sport franchise relocations was prompted by my concern that the Nation's cities and sports fans were being ill-treated by a few profit-hungry owners. The current state of the law is, I am convinced, not adequate to protect the legitimate interests of the cities and the fans in team stability. I voted against reporting S. 259 to the floor because I believe it to be worse for the cities and fans than the status quo.

In 1961, and again in 1966, Congress gave professional football a limited exemption from the application of the Federal antitrust laws. First, the NFL and the American Football League (AFL) were each permitted to bargain collectively for the sponsored telecasting of their games.[1] In 1966, the Congress permitted the merger of the two leagues into what is today known as the NFL. It is unclear whether either of these actions by Congress alone would have been sufficient to create the current unfortunate situation, but it is clear that together these actions have effectively eliminated those market forces which would have generated the addition of new franchises into the League.

As a result, there has been no expansion in the NFL since that merger beyond the four additional teams contemplated in the merger agreement. Yet cities such as Phoenix and Birmingham which can clearly support a NFL franchise are denied one. They are forced to try to lure teams away from cities which already have one. The bait, of course, is more and more subsidies and more and more guarantees. This creates a bidding war between cities in which the only winner is the team owner and the losers are the public purse and the fans, for with guaranteed profits there is little incentive to make the effort necessary to put a winning team on the field.

Rather than address the problem which Congress precipitated by its earlier actions in a way which would protect the cities and the fans and correct, to some degree, the disparate bargaining power between the teams and the cities, the bill reported by the Committee only makes matters worse. It gives the NFL additional powers far beyond those necessary to prevent inappropriate team moves, and gives the cities nothing, merely exacerbating the disadvantage under which they operate now. This gratuitous grant of additional antitrust immunity, albeit implied, in the majority of the bill has absolutely no hearing record upon which it could be based.

That brief portion of the bill which seeks to address the cities' concerns constitutes at best a token gesture. In order to justify a move, the league must find that the move is "reasonable and ap-

[1] 15 U.S.C. 1291; the term "sponsored telecasting" has generally been construed to mean free television.

propriate." In my view, not only could a future move of the St. Louis Cardinals to Phoenix be found to be reasonable, but so too could the past move of the then Oakland Raiders to Los Angeles. I submit that a better standard to justify a move would be that the move was "necessary and appropriate." That standard would promote stability while ensuring that truly troubled franchises which were not supported by the community could move. Moreover, the standard of review of such decisions contained in the bill is not *de novo* but a lesser administrative standard that lends a presumption of validity to the league's decision.

The other portion of the bill which deals with the interests of the cities is a provision requiring the enunciation by the league of some expansion criteria. Of course, if Congress had never allowed the merger of two competing leagues, this would be unnecessary for a free and competitive market would compel expansion to the extent the market would support it.

Nonetheless, although I agree with requiring a cartel to state the circumstance under which it will accept new members as a hedge against a misuse of its market power, I find that requirement alone to be insufficient in this context. When asked to state the NFL's position on expansion, Pete Rozelle, the Commissioner, conditions every hopeful response on the existence of a healthy "business and legal environment." That means, as indicated in the Commission's testimony before the Judiciary Committee, that pending litigation would have to have been settled or dismissed. In addition, Mr. Rozelle has indicated that it is unlikely that the NFL would feel free to expand into a city which currently had a United States Football League (USFL) team.

Thus, to state an expansion policy that will not be implemented for years, if at all, is hardly a burden on the NFL, nor a gift to the "have-not" cities. Had the Commerce Committee chosen to give some guidance to the courts regarding the lawfulness of an expansion by the NFL into a USFL city, the provision might well have had some significance.

Finally, and again without any supporting evidence in the record, the Committee has included language in the bill which may have significant repercussions in the future. First, factor number 10 to be considered by the league in determining the "reasonableness" of a move is,

"(10) the number of professional, university and college teams playing the same sport as the member club which are currently conducting sports operations in the member club's home territory and in the proposed location of such member club, and the effects that the proposed change in the location of such member club may have on such teams and their leagues;"

That language can be argued, and I am certain if this legislation is passed will be argued, to alter in certain circumstances the analyses of the "relevant Market" for the purposes of the application of the antitrust laws to professional sports teams from that undertaken by the 9th circuit in the *Raiders* case.[2] Why the Commerce

[2] *Los Angeles memorial Coliseum Commission* v. *NFL*, 726 F. 2d 1381, 1984.

Committee would choose to do that without hearing from interested parties is unclear to me.

Second, the Committee has far exceeded that grant of authority to the NFL which is even arguably necessary to preserve a League "package" for television. When Pete Rozelle first spoke to me about the needs of the NFL as a result of the *Raiders* case, he said, with the concurrence of his attorney, that all the League needed was the power to compel its members to participate in the free TV package and to share the revenues derived from that package—nothing more. He specifically stated that the League needed no new authority at this time with respect to pay or cable television. But the language of the Committee bill is broad enough to permit the League to take some or all or its games off of free TV. The Congressional Research Service has stated that, "(c)onceivably, the exemption could be construed to cover pooled cable TV sales or rules respecting team debt or other expenses." Thus the NFL could choose, for instance, to negotiate a TV package with the networks which would cover only regular season games. The participants in the playoffs, including the Super Bowl, could then sell the playoff TV rights to the highest bidder and split the revenues with the remainder of the NFL teams. The highest bidder, of course, could include pay or cable television. That would indeed be an ironic result of legislation intended to protect cities and fans as well as the NFL.

In summary, this issue is before the Congress because in our previous forays into the business of professional sports we have not given due consideration to the long-term implications of our actions. Had we stopped to consider the impact of our actions on competition and future expansion in 1966, the merger would not have been permitted or there would have been additional safeguards in the legislation to ensure appropriate future expansion. I urge my colleagues to take time in the course of this debate to consider what we have in fact done to benefit our cities and our fans in this bill and what we have done to invite future problems. I believe the answers to those inquiries are, "not much" and "quite a bit", respectively.

SLADE GORTON.

MINORITY VIEWS OF MR. GORE

S. 259, as reported, by the Committee unsuccessfully attempts to solve certain issues associated with the location of professional sports franchises, particularly football franchises. Although I agree with the Committee findings regarding franchise instability and its detrimental consequences on affected communities, I view S. 259 as an inadequate response more likely to aggravate rather than solve the problem it seeks to address.

The fundamental cause of franchise instability in professional football is scarcity of franchises. The NFL has refused to expand to meet legitimate demand and this has occasioned intense bidding by cities to lure and maintain existing franchises. Professional team owners are positioned to extract enormous benefits and subsidies from municipalities and they are taking advantage of these opportunities. So long as the NFL refuses to expand, the current situation with its frenzied bidding and disappointed sports fans will persist even if the committee bill becomes law.

It is not surprising that concerned parties have looked to the Congress for help because it is an earlier Congressional waiver of the antitrust laws for the NFL that has contributed to the current problems. What is surprising is that the Committee has ignored the real cause of the problem and instead asked to further protect the NFL from the antitrust laws. To my mind, the Committee has missed the point.

To understand the relationship between earlier Congressional action and the current franchise instability problem, it is necessary to examine the television contract situation around the time the AFL was formed in 1959. At that time and in earlier years, the NFL sold television rights to their games on an individual rather than league-wide basis. Unlike the NFL, the AFL teams agreed to pool their television rights and entered into a league-wide contract with a single network. The NFL then changed its practice, pooled television rights on a league-wide basis and entered into a 2-year contract with a single network to televise its games. This arrangement by the NFL was challenged, however, by the U.S. Government, and in July, 1961, in *United States* v. *National Football League,* 196 F. Supp. 445 (E.D. Pa. 1961), the court held the NFL's network contract in violation of the antitrust laws. The AFL's league-wide contract was not challenged and remained in operation, creating a certain competitive imbalance in favor of the AFL.

Primarily in response to this lawsuit but also in recognition of the need for professional sports leagues generally to have league-wide contracts, Congress enacted the Sports Broadcasting Act of 1961, which permitted member clubs of professional leagues to pool their television rights without violating antitrust laws. In passing this legislation, Congress recognized the potential anticompetitive

consequences of the exemption. This concern is reflected in the act's legislative history, which makes clear that Congress did not intend that the act to be used to establish a monopolistic position such as the NFL now maintains through its league-wide contract with all three broadcasting networks. In this regard, the report of the House Judiciary Committee on the Sports Broadcasting Act of 1961 said the following:

Some concern has been expressed that the language of this section might be considered to give an absolute exemption from the antitrust laws for any kind of television arrangements entered into by a league, and particularly an arrangement which might involve several networks and might thus exclude a competing league from all television coverage. *This is not the intent of H.R. 9096 which is designed to permit the sale of television rights by a league and its member clubs to a single network. The committee does not intend that an exemption from the antitrust laws should be made available to a league or its members where the intent or effect of a joint agreement is to exclude a competing league or its members from the sale of any of their television rights.* (Italic added).

The record of the House Judiciary hearings on the bill are also pertinent. During those hearings, the Chief Counsel of the Committee questioned Commissioner Rozelle and his attorney about the competitive consequences of a league-wide contract with more than one network. The following exchange appears in the record for the August 28, 1961 hearing:

> COMMITTEE COUNSEL: Now, if all the networks were tied up by one football league, by the National Football League, for example, would not the other league, the American Football League, possibly be at a major competitive disadvantage?
>
> Mr. ROZELLE: I should certainly think so.
>
> COMMITTEE COUNSEL: Now, to forestall against that possibility, do you believe that the bill should specifically prohibit a league from entering into a package contract with more than one network?
>
> NFL COUNSEL: *The objective of this legislation is to give us the right to do on a single network, and when we have to reserve our thinking to the degree that you would now require us to go on a single network, I cannot see how we could have any objection to a provision such as that.* (Italic added).

Commissioner Rozelle then proceeded to add:

> Mr. ROZELLE: If I might say there is no intention on our part of using more than one network if this legislation passes.

In 1966, Congress acted again in this area when it exempted the merger of the AFL and the NFL from antitrust action. As a result of the merger, the enlarged NFL had contracts with two networks. Soon after the merger was consummated in 1969, Rozelle entered into a series of agreements with the third network. The NFL did not seek Congressional approval to do what the act intended to preclude. Fortunately for the NFL, there was no competing league to

complain to the courts or the Congress about an arrangement which Commissioner Rozelle admitted would place another football league at a "major competitive disadvantage."

By entering into contracts with all three networks, the NFL has been able to effectively eliminate the opportunity for a competing league to establish itself in the fall season. With no competition, they have been free to limit the available franchises and to ignore justifiable claims from municipalities for teams. Since the merger 15 years ago, the NFL has enjoyed an increase in annual television revenues per team from close to $1,500,000 in 1970 to $15 million in 1985. With the supply of franchises limited, the value of NFL franchises has increased dramatically. It is no wonder that the owners have been reluctant to establish new franchises. This would only decrease their share of available television revenues and diminish competition for, and accordingly the resale value of, their franchises.

I proposed two amendments in Committee that in different ways would have dealt directly with the scarcity that is at the root of the problem which the Committee sought to address. The first was an amendment to the Sports Broadcasting Act to limit the NFL to contracts with two networks unless a competing league also had a network contract. The second amendment was more straightforward and would have required the NFL to expand by six teams in 1990. Neither amendment was accepted.

Unless something along the lines of the amendments which I offered is done, the current situation will only worsen. While I share the Chairman's and the Committee's interest in allowing the NFL and other professional sports leagues to better control the movement of franchises, I am of the view that legislative action in that area alone does nothing to solve the real cause of the problem. If you take the simple step of limiting the NFL antitrust exemption to operate consistent with the Congress' original intention, you would establish a competitive environment which in due course would bring more professional football, including NFL franchises, to more cities. This would put a quick halt to the frenzied bidding between competing cities for the existing number of limited franchises, which is only making owners richer, taxpayers poorer, and sports fans feel betrayed.

ALBERT GORE, JR.

APPENDIX

THE NATIONAL FOOTBALL LEAGUE,
New York, NY, March 25, 1985.

Hon. JOHN C. DANFORTH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: During the Commerce Committee's February 4, 1985, hearing on S. 259 and other professional sports legislation, you inquired about future expansion of the National Football League. By this letter, I am pleased to elaborate on my views.

S. 259 clarifies sports league authority in the key areas of team location, revenue sharing, and ownership selection. The League believes that S. 259 goes a long way to resolving the serious legal issues created by the decisions in the Raiders' relocation case, and S. 259 is thus likely to create an atmosphere conducive to sports league expansion.

At the February 4 hearing, I referred to the prospects for NFL expansion as follows:

> "Now on expansion, we will expand. The timing is the key. We have to have a degree of stability in our league before the owners will expand. They have given evidence [of the importance of expansion] on three different occasions in the last 25 years in more than doubling their league. We have 28 teams in the National Football League, more than any other league, and they will expand."

A prerequisite for expansion is league stability in both business and legal terms. Before a league can expand, it must have reasonable assurance that the expansion teams will prove successful in business terms, a reasonable certainty that the league can enforce its decisions on where its teams will operate and on how it can fairly distribute its revenues, and an expectation that expansion will not produce financial instability at the level of its weaker clubs. Further, the league must be able to approve ownership selection, so that teams are given maximum assurance of sound management.

Current outstanding court decisions create major uncertainties and risks with respect to League efforts to act collectively on matters of league-wide interest. Moreover, the Raiders' case has resulted in potential treble damage liability well in excess of $50 million for the League and has seriously undermined the League operating conditions on which past NFL expansion has been based.

Should legislation be enacted in a form that contains the essential features of S. 259 in the key areas of team location, revenue sharing, and ownership selection, I will recommend to the NFL clubs that they favorably consider expanding at an early date. If such legislation were enacted, I believe that the NFL clubs could

look toward 1988 or 1989 as a target for a two-team expansion of the NFL, subject to the then-current business and legal environment in professional sports. In evaluating such expansion, one factor to be considered would be the past record of communities in supporting professional football.

Sincerely,

PETE ROZELLE, *Commissioner.*

PETER V. UEBERROTH,
COMMISSIONER OF BASEBALL,
New York, NY, April 1, 1985.

Hon. JOHN DANFORTH,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to reiterate my earlier statements to you, both in my testimony presented to the Committee on Commerce, Science and Transportation and in our direct conversation, of Baseball's intention to expand from its present twenty-six teams, perhaps by as many as six additional clubs.

We have expanded four times since 1961, adding ten new Major League Clubs, and we are committed to the principle that carefully planned expansion should continue. We will be looking for expansion locations which meet the following three criteria: a solid demonstration of fan support; multiple, local ownership, with deep roots in the community; and, a total, long-range commitment from local community and government leaders in support of the club, including an appropriate stadium lease. These factors are, in my opinion, crucial to the successful operation of any new Baseball franchise.

Thank you for your continuing interest in Major League Baseball, and your thoughtful approach to these issues.

Sincerely,

PETER V. UEBERROTH, *Commissioner.*

○

99TH CONGRESS
1st Session

SENATE

REPORT
99-69

ERRATA

PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985

MAY 21 (legislative day, APRIL 15), 1985.—Ordered to be printed

---

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 259]

CORRECTIONS

On page 3, line 28, strike out "not" and insert "now".

On page 3, footnote 7, strike out "E.D. Mo. filed May 24, 1983." and insert "(E.D. Mo. filed May 24, 1983)."

51-010 O

S263-16

Calendar No. 151

99TH CONGRESS
1st Session

SENATE

REPORT
99-70

AUTHORIZATION OF APPROPRIATIONS FOR THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

MAY 22 (legislative day, April 15), 1985.—Ordered to be printed

---

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 958]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 958) to provide authorization of appropriations for activities under the Magnuson Fishery Conservation and Management Act, having considered the same, reports favorably thereon without amendments and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 958, as reported, amends section 406 of the Magnuson Fishery Conservation and Management Act (MFCMA) to authorize appropriations of $68,555,000 for fiscal year 1986 and $71,639,975 for fiscal year 1987.

BACKGROUND AND NEEDS

Enacted in 1976, the MFCMA establishes domestic management authority for most species of fish within 200 miles of our Nation's coastline. Management authority is vested in eight Regional Fishery Management Councils and the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service. Optimum levels of harvest are set, and fishery management plans are established and implemented by the Regional Fishery Management Councils and the NOAA Marine Fisheries Service. Fish within the Nation's 200-mile waters that will not be utilized by the U.S. fishing indusry can be allocated to foreign countries by the Secretary of State.

51-010 O

S263-17

Since enactment, the MFCMA has been reauthorized three times. The act has been the centerpiece of our domestic fishery law and is critical for development and management of fishery resources within 200 miles of our Nation's shores.

Legislative History

S. 958 was introduced by Senator Danforth on April 18, 1985, with Senators Packwood, Gorton, and Stevens as cosponsors. Written comments on the bill were received and reviewed.

S. 958 was ordered reported unanimously by the full Committee on May 9, 1985.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 17, 1985.

Hon. John C. Danforth.
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 958, a bill to provide authorization of appropriations for activities under the Magnuson Fishery Conservation and Management Act.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner, *Director.*

Congressional Budget Office Cost Estimate

1. Bill number: S. 958.

2. Bill title: A bill to provide authorization of appropriations for activities under the Magnuson Fishery Conservation and Management Act.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, May 9, 1985.

4. Bill purpose: S. 958 would authorize appropriations of $68.555 million and $71.640 million for fiscal years 1986 and 1987, respectively, to the Department of Commerce for the fishery conservation and management program.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Authorization level	68.6	71.6			
Estimated outlays	46.6	67.2	21.4	3.5	1.4

The costs of this bill fall within budget function 300.

Basis of estimate: For purposes of this estimate, it is assumed that S. 958 will be enacted during fiscal year 1985 and that the full amounts authorized will be appropriated prior to the beginning of each fiscal year. Outlays have been estimated on the basis of historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

The bill would merely reauthorize the MFCMA for fiscal years 1986 and 1987. The bill will therefore have no economic impact on either individuals or businesses. There will be no impact on personal privacy; nor will there by any new paperwork requirements.

Section-by-Section Analysis

The first section of S. 958 authorizes $68,555,000 in fiscal year 1986, and $71,639,975 in fiscal year 1987, for the Magnuson Fishery Conservation and Management Act.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

The Magnuson Fishery Conservation and Management Act

Section 406 of that Act

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) $5,000,000 for the fiscal year ending June 30, 1976.

(2) $5,000,000 for the transitional fiscal year ending September 30, 1976.

(3) $25,000,000 for the fiscal year ending September 30, 1977.

(4) $30,000,000 for the fiscal year ending September 30, 1978.

(5) $30,000,000 for the fiscal year ending September 30, 1979.

(6) $33,000,000 for the fiscal year ending September 30, 1980.

(7) $40,000,000 for the fiscal year ending September 30, 1981.

(8) $47,000,000 for the fiscal year ending September 30, 1982.

(9) $59,000,000 for the fiscal year ending September 30, 1983.

(10) $64,000,000 for the fiscal year ending September 30, 1984.

(11) $69,000,000 for the fiscal year ending September 30, 1985.

(12) $68,555,000 for the fiscal year ending September 30, 1986.

(13) $71,639,975 for the fiscal year ending September 30, 1987.

○

Calendar No. 152

99TH CONGRESS
1st Session

SENATE

REPORT
99-71

COASTAL ZONE MANAGEMENT ACT OF 1972 REAUTHORIZATION

MAY 22 (legislative day, APRIL 15), 1985.—Ordered to be printed

---

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 959]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 959) to amend the Coastal Zone Management Act of 1972 to provide authorization of appropriations, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE OF BILL

The purpose of this bill is to reauthorize the Coastal Zone Management Act (CZMA) for 5 years (fiscal years 1986 through 1990) and to repeal a provision of the act relating to personnel. S. 959 authorizes $43,205,000 for fiscal year 1986; $45,149,225 for fiscal year 1987; $47,180,940 for fiscal year 1988; $49,304,082 for fiscal year 1989; and $51,522,765 for fiscal year 1990.

BACKGROUND AND NEEDS

The CZMA was enacted in 1972 to encourage and assist States in developing and implementing management programs to preserve, protect, develop, and where possible, restore or enhance the resources of the Nation's coast by the exercise of planning and control of activities occurring in and affecting their coastal zones.

The current authorization of appropriations for grants to States and for program activities by the National Oceanic and Atmospheric Administration (NOAA) to implement the act expires at the end

51-010 O

S263-18

of fiscal year 1985. This bill reauthorizes appropriations for those grants and activities for 5 additional years.

Legislative History

S. 959 was introduced by Senators Danforth, Packwood, Gorton, Stevens, and Hollings on April 18, 1985. The National Ocean Policy Study and the full Committee held hearings on the bill on May 3, 1985. Testimony on the coastal zone management activities reported in this bill was received from representatives of NOAA, coastal States, local government and citizens groups, the oil, gas and related ocean industries, and the environmental community. The Committee ordered reported S. 959 unanimously on May 9, 1985.

Summary of Major Provisions

S. 959, as reported, imposes a freeze on spending under the CZMA, capping the fiscal year 1986 authorization level at the fiscal year 1985 appropriations level and allowing a 4.5 percent increase during each of the succeeding years.

The programs and functions authorized by the bill include:

Interstate Grants (Section 309)

Fiscal Year	*Dollars*
1986	1,000,000
1987	1,045,000
1988	1,092,025
1989	1,141,166
1990	1,192,519

Estuarine Sanctuaries (Section 315)

Fiscal Year	*Dollars*
1986	2,930,000
1987	3,061,850
1988	3,199,633
1989	3,343,617
1990	3,494,079

Program Management and Administration by NOAA

Fiscal Year	*Dollars*
1986	3,275,000
1987	3,422,375
1988	3,576,382
1989	3,737,319
1990	3,905,498

Program Administration and Development Grants (Section 306 and 306A)

Fiscal Year	*Dollars*
1986	36,000,000
1987	37,620,000
1988	39,312,900
1989	41,081,980
1990	42,930,669

Total

Fiscal Year	*Dollars*
1986	43,205,000
1987	45,149,225
1988	47,180,940
1989	49,304,082
1990	51,522,765

Section 2 of S. 959 repeals section 15(c) of the Coastal Zone Management Act Amendments of 1976 which authorized establishment of and hiring to fill four new positions outside the competitive service at rates up to GS–18.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 17, 1985.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 959, a bill to amend the Coastal Zone Management Act of 1972 to provide authorization of appropriations, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Rudolph G. Penner, *Director.*

Congressional Budget Office Cost Estimate

1. Bill number: S. 959.

2. Bill title: A bill to amend the Coastal Zone Management Act of 1972 to provide authorization of appropriations, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, May 9, 1985.

4. Bill purpose: S. 959 would authorize appropriations to the Secretary of Commerce for programs established by the Coastal Zone Management Act of 1972.

The bill would authorize funds through 1990 and federal administrative expenses and grants for (1) state administrative assistance, (2) the estuarine program, (3) the coastal resource improvement program, and (4) programs conducted pursuant to interstate agreements.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Authorization level	43.2	45.1	47.2	49.3	51.5
Estimated outlays	38.9	45.0	47.0	49.1	51.3

The costs of this bill fall within budget function 300.

Basis of estimate: The authorization levels are those stated in the bill. For purposes of this estimate, it is assumed that S. 959 will be enacted during fiscal year 1985 and that the full amounts authorized will be appropriated prior to the beginning of each fiscal year. Outlays have been estimated on the basis of historical spending patterns.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Deborah Reis.
10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

S. 959, as reported, reauthorizes appropriations for activities under the CZMA. It will result in no additional regulation and will therefore have no further effect on the number or type of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

Section-by-Section Analysis

S. 959 contains two sections. The first section contains four paragraphs amending section 318 of the CZMA (16 U.S.C. 1464) concerning authorization levels. Section 2 repeals a provision relating to personnel.

All authorization levels in the bill cap fiscal year 1986 authorization levels at the fiscal year 1985 appropriation levels and allow a 4.5 percent increase during each of the succeeding 4 years.

SECTION 1(1)

This section authorizes appropriations for section 309 grants to States to assist them in developing and coordinating interstate coastal zone planning and management.

SECTION 1(2)

This section authorizes appropriations for section 315 grants to States to assist them in acquiring, developing or operating estuarine sanctuaries and in acquiring lands to provide for the preservation of islands.

SECTION 1(3)

This section authorizes appropriations for the management and administration of NOAA's coastal zone management program.

SECTION 1(4)

This section adds a paragraph (7) to section 318 to authorize appropriations for grants to States under both section 306 and section

306A. Such grants are available to States to assist them in meeting the costs of administering and implementing their coastal zone management programs. Section 306 and 306A grants have been authorized separately under section 318(1) and (2), respectively. By combining the authorizations, the recipient States will gain an increased role and flexibility in deciding how they wish to allocate available funds between section 306 and 306A activities.

SECTION 2

This section repeals section 15(c) of the Coastal Zone Management Act Amendments of 1976 (16 U.S.C. 1451, note). That section authorized the establishment of and hiring to fill four new positions outside the competitive service at rates up to GS–18. These special positions are no longer needed.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE COASTAL ZONE MANAGEMENT ACT OF 1972

Section 318 of that Act

AUTHORIZATION OF APPROPRIATIONS

SEC. 318. (a) There are authorized to be appropriated to the Secretary—

(1)–(3) * * *

(4) such sums, not to exceed $3,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985*; not to exceed $1,000,000 for the fiscal year ending September 30, 1986; not to exceed $1,045,000 for the fiscal year ending September 30, 1987; not to exceed $1,092,025 for the fiscal year ending September 30, 1988; not to exceed $1,141,166 for the fiscal year ending September 30, 1989; and not to exceed $1,192,519 for the fiscal year ending September 30, 1990* as may be necessary for grants under section 309 to remain available until expended;

(5) such sums, not to exceed $9,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985*; not to exceed $2,930,000 for the fiscal year ending September 30, 1986; not to exceed $3,061,850 for the fiscal year ending September 30, 1987; not to exceed $3,199,633 for the fiscal year ending September 30, 1988; not to exceed $3,343,617 for the fiscal year ending September 30, 1989; and not to exceed $3,494,079 for the fiscal year ending September 30, 1990* as may be necessary for grants under section 315 to remain available until expended;

(6) such sums, not to exceed $6,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1985*; not to exceed $3,275,000 for the*

fiscal year ending September 30, 1986; not to exceed $3,422,375 for the fiscal year ending September 30, 1987; not to exceed $3,576,382 for the fiscal year ending September 30, 1988; not to exceed $3,737,319 for the fiscal year ending September 30, 1989; and not to exceed $3,905,498 for the fiscal year ending September 30, 1990 as may be necessary for administrative expenses incident to the administration of this [title.] *title; and*

(7) such sums, not to exceed $36,000,000 for the fiscal year ending September 30, 1986; not to exceed $37,620,000 for the fiscal year ending September 30, 1987; not to exceed $39,312,900 for the fiscal year ending September 30, 1988; not to exceed $41,081,980 for the fiscal year ending September 30, 1989; and not to exceed $42,930,669 for the fiscal year ending September 30, 1990, as may be necessary for grants under sections 306 and 306A, to remain available until expended.

(a)–(b) * * *

* * * * * * *

THE COASTAL ZONE MANAGEMENT ACT AMENDMENTS OF 1976

Section 15 of that Act

SEC. 15. ADMINISTRATION.

(a)–(b) * * *

[(c) The Secretary may, to carry out the provisions of the amendments made by this Act, establish, and fix the compensation for, four new positions without regard to the provision of chapter 51 of title 5, United States Code, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title. Any such appointment may, at the discretion of the Secretary, be made without regard to the provisions of such title 5 governing appointments in the competitive service.]

○